

scoop

entertaining the law



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Sharper teeth for State taxes...

In **Scoop 1** in May 2010 we reported a range of *RevenueSA* activities aimed at enforcing State revenue laws and protecting South Australia's revenue base.

If anything, RevenueSA has become even more vigilant since then. We note the following areas that you should be particularly wary of in the current climate:

Land Rich Share Transfers

The land rich share transfer rules have been in place for a long time now. From 1 July 2011 these rules were amended to reflect the following:

- Removal of the 60% land to non-land ratio – any acquisition of a controlling interest in an entity with more than \$1m land is now fair game.
- Inclusion of the value of fixtures (whether a 'fixture' legally or not) in the \$1m land value calculation. This broadens the application of the rules.
- The duty is imposed not only on the land value but also on the value of SA goods held by the landholder. This is tax 'creep' in anyone's language.
- Listed companies are now subject to the rules.

So... the bar has been lowered and, once over it, it's not just land in the firing line!

Anti-Avoidance Rules for SA State Taxes

From 1 July 2011, a general anti-avoidance rule operates for SA State taxes. The rule is in the mould of Part IVA... but without any private or public rulings system to assist taxpayers in its interpretation. The new rule throws doubt on the following:

- Choosing particular structures for an anticipated beneficial tax treatment.
- Choosing not to document a transaction when offer and acceptance by conduct will suffice.
- Choosing to postpone a transaction until after a particular planned exemption takes effect.

The danger is that *RevenueSA* will use these rules as a blunt instrument for negotiation and even assessment when considering the true characterisation of a transaction or structure.

Payroll Tax

Payroll tax continues to be a big focus for audit activity. Note the following red flags:

- Paying *Workcover* for persons that are not considered subject to payroll tax.
- Changing an employee's status 'overnight' to contractor/ ABN status.
- Making partnership distributions (via trusts) to persons working in the business.

Consider how you might respond to a payroll tax investigation for an unregistered client with a partnership of trusts in receipt of significant drawings in light of the anti-avoidance rules...

Abolishment of Stamp Duty on Goodwill/ Business Assets from July 2012

Finally, our tip for 2012...watch out for yet another delay to the abolishment of stamp duty on transfers of goodwill/ business assets. Scheduled for 1 July 2012, all the noise from Government is that these types of concessions will be shelved. Watch this space!

As always, the lesson here is to have eyes in the back of your head when dealing with State taxes... assume nothing, check everything and get expert advice early on.

If you require any advice, or have any issues or complications as regards State taxes, please let us know.

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Under recent changes in law, if there is a separation between the beneficial owner and the holder/ user/ lessee of personal property (e.g. shares, plant, intellectual property) the arrangement must be registered as a security interest under the *Personal Properties Securities Act 2009* (Cth).

Common examples include: debt factoring arrangements, consignment arrangements, operating/ finance leases, bailments and retention of title arrangements.

Registration is scheduled to commence on 1 February 2012; however, we suspect that there may be further delays in implementing the scheme.



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